UNITED STATES SUPREME COURT

Supreme Court, U.S.
FILED
DEC 16 198
ALEXANDER L. STEVAS
CLERK

FRANK B. JAMES, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	NO. 83-623
	)	
JAMES G. WATT, et al.,	)	
	)	
Respondents.	)	

OPPOSITION TO PETITIONERS' MOTION
TO STRIKE APPEARANCES

The Wampanoag Tribal Council of Gay Head, Inc., Gladys Widdiss and Donald Widdiss are parties to the above entitled action and are being represented by the Native American Rights Fund. Through their counsel, these parties filed a Brief in Opposition to the Petition for Writ of Certiorari herein. On December 9, 1983, a copy of a pleading entitled "Petitioners' Motion to Strike Appearances of Henry J. Sockbeson, Arlinda Locklear and Native American Rights Fund for Gay Head Tribe" was received by respondents. This motion seeks to have respondent's Brief in Oppostion to Petition for a Writ of Certiorari stricken from the record. For the reasons set forth below, respondents oppose the motion.

1. The Native American Rights Fund represents the above listed parties to this action and, as such, is entitled to file a response to the Petition for Certiorari as a matter of right. Supreme Court Rules 19 and 20. Having named these parties as defendants in their action, the petitioners must not now be permitted to silence them simply because petitioners do not approve of the position respondents have taken or of their choice of counsel.

2. The crux of petitioners' motion seems to be that a tribe may not create a state chartered corporation in order to, among other things, pursue a tribal land claim. This argument, however, has been consistently rejected by lower courts. See Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp., et.al., 418 F. Supp. 798, 807-08 (1976) (Narragansett Tribe, incorporated at the time under Rhode Island law); Crowe v. Eastern Band of Cherokee Indians, Inc., 506 F.2d 1231, 1235-36 (4th Cir. 1974) (Eastern Band of Cherokee, organized under a North Carolina corporate charter).

3. Petitioners attempt to avoid this difficulty by relying upon a quotation from Cohen's Handbook of Federal Indian Law (1971 UNM ed.) which states that individuals in a tribe have rights of participation that are "similar in some respects" to those of an individual shareholder in a corporation. Cohen, supra at 183. At no point, however, does Cohen suggest that suing to enforce tribal property rights is one of those similarities or that an individual may assert such rights in a manner contrary to tribal decisionmaking.

4. Petitioners cite Short v. United States, 661 F.2d 150, 155 (Ct.Cl. 1981), in support of their position that individuals may assert tribal rights. However, that case arose in the context of a tribe that had no functioning tribal government. Short did not hold that individual tribal members could bring a competing action designed to impede the ability of the tribe's governing body to pursue a tribal land claim under the Indian Trade and Intercourse Act, Ch. 33, 1 Stat. 137, now codified at 25 U.S.C. sec. 177. To the contrary, it has been held by this Court that a dissident minority may not

affect tribal decisions regarding the conduct of tribal litigation. Pueblo of Santa Rosa v. Fall, 273 U.S. 315 (1927).

5. It is true that the Wampanoag Tribe of Gay Head is not currently a federally recognized tribe. This fact, standing alone, does not impair the tribe's ability to pursue a cause of action under the Indian Trade and Intercourse Act. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1970).

6. Here, as shown by the record below, respondent Wampanoag Tribe of Gay Head has filed an action in both its tribal capacity and as a state chartered corportaion. This approach is not new or novel and has proven successful in the past. Narragansett, supra; see also 25 U.S.C. sec. 1701. The individual tribal members presently before this Court disagree with the tribe's litigation strategy and have attempted to assert their own theory of the case in a competing lawsuit. Ultimately, it will be Congress who must decide the manner in which the tribe's claim will be settled and it should be left to that body to decide how to accomplish that end.

Respectfully submitted,

WAMPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC.,
GLADYS WIDDISS and
DONALD WIDDISS,

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